Public Prosecutor v Una ak Mandau (m)

HIGH COURT (SRI AMAN) — CRIMINAL TRIAL NO 45–1 OF 2010–1(SG)
LINTON ALBERT J
21 APRIL 2011

Criminal Law — Murder — Penal Code, s 302 — Circumstantial evidence — Paucity of evidence — Prima facie case — Whether established — Whether defence raised reasonable doubt — Whether prosecution case established beyond reasonable doubt

The accused was charged under s 302 of the Penal Code for causing the death of the deceased. PW1 in his testimony said that the accused had told him about what he had done to the deceased in the Iban language and translated into Bahasa Melayu, it meant: 'Cuba melawat kawan kamu. Saya sudah beri dia sekair.' Further, PW3, who was the wife of the deceased and the daughter of the accused, confirmed that the quarrel between the accused and the deceased took place at the sitting room of the deceased's house. PW3 said that while she and the deceased were quarrelling, her father came back and tried to end their quarrel. She said that when the accused tried to interfere, the deceased grasped and strangled the accused from behind. On seeing this, PW3 testified that she quickly took her child outside. After sometime, when the commotion had stopped, and after hearing the sound of her father's motorcycle and suspecting that her father had left, she went back into the house and saw the deceased lying on the ground with blood on his forehead. The autopsy report stated the cause of death as follows: 'heamoperitoneum due to ruptured liver due to blunt abdominal injuries.' According to PW15, who carried out an autopsy on the deceased, the blunt abdominal injuries could be caused by a leg, hand or other blunt objects. The accused testified that on the date of the incident, when he arrived home after work, there was an altercation between the deceased and his wife, PW3, and the accused asked PW3 what it was about and she answered 'that drunk fellow' to which the accused responded by telling the deceased to stop drinking. The deceased retorted saying 'one-eyed person' and went from the back to pin the accused down but the accused ran out with his youngest grandchild. The accused did not know what happened to the deceased after that until later when PW3 came to the school where the accused was working to tell the accused what happened to the deceased. The accused denied that the deceased strangled him from behind and retaliated by hitting the deceased. He also denied that he used his hands and legs to hit the deceased.

Held, acquitting and discharging the accused:

(1) Apart from the evidence of PW3, there was a paucity of evidence which

would establish that the accused had kicked or punched the deceased or that he had used a blunt object to inflict the injury which was the cause of death of the deceased. The explanation given by the accused although brief, was not a bare denial. It was not necessary for every explanation to be long or complicated in order to be true. All too often the truth is short and simple, devoid of embellishment (see para 12).

(2) On the totality of evidence, this court is satisfied that the prosecution had failed to prove its' case beyond reasonable doubt because it was not for the court to make the necessary inferences, where, as here, the circumstances do not admit of irresistible inferences which would establish that the accused had inflicted the injury which caused the death of the accused. The accused's explanation, short as it was, was sufficient to cast a reasonable doubt on the prosecution's case (see para 12).

[Bahasa Malaysia summary

Tertuduh dituduh di bawah s 302 Kanun Keseksaan kerana menyebabkan kematian si mati. PW1 dalam keterangannya mengatakan bahawa tertuduh telah memberitahunya tentang apa yang telah dilakukan untuk si mati dalam bahasa Iban dan diterjemahkan ke dalam Bahasa Melayu, ia bermaksud: 'Cuba melawat kawan kamu. Saya sudah beri dia sekair.' Seterusnya, PW3, isteri si mati dan anak perempuan tertuduh, mengesahkan bahawa pertengkaran antara tertuduh dan si mati berlaku di ruang tamu rumah si mati. PW3 mengatakan bahawa sementara dia dan si mati sedang bertengkar, ayahnya datang semula dan cuba untuk meleraikan pertengkaran mereka. Dia berkata bahawa apabila tertuduh cuba untuk campur tangan, si mati memegang dan mencekik tertuduh dari belakang. Apabila melihat ini, PW3 memberi keterangan bahawa dia segera mengambil anaknya di luar. Selepas beberapa ketika, apabila kekecohan telah berhenti, dan selepas mendengar bunyi motosikal bapanya dan mengesyaki bahawa ayahnya telah beredar, dia masuk semula ke dalam rumah dan melihat si mati yang terbaring di atas lantai dengan darah di dahinya. Laporan bedah siasat menyatakan punca kematian seperti berikut: 'heamoperitoneum due to ruptured liver due to blunt abdominal injuries.' Menurut PW15 yang menjalankan bedah siasat ke atas si mati, kecederaan abdomen yang tumpul boleh disebabkan oleh kaki, tangan atau lain-lain objek yang tumpul. Tertuduh memberi keterangan bahawa pada tarikh kejadian itu, apabila dia tiba di rumah selepas kerja, berlaku perbalahan antara si mati dan isterinya, PW3, dan tertuduh menanyakan puncanya dan PW3 menjawab 'that drunk fellow' yang mana tertuduh bertindak dengan memberitahu si mati untuk berhenti minum minuman keras. Si mati membalas dengan berkata 'one-eyed person' dan pergi dari belakang tertuduh untuk menjatuhkannya tetapi tertuduh berlari keluar dengan cucu bongsunya. Tertuduh tidak tahu apa yang berlaku kepada si mati selepas itu sehingga kemudiannya apabila PW3 pergi ke sekolah di mana tertuduh berkerja untuk memberitahu tertuduh apa yang berlaku kepada si mati. Tertuduh menafikan

bahawa si mati mencekiknya dari belakang dan dia bertindak dengan memukul si mati. Dia juga menafikan menggunakan tangan dan kakinya untuk memukul si mati.

Diputuskan, membebaskan dan melepaskan tertuduh:

(1) Selain daripada keterangan-keterangan PW3, terdapat kekurangan bukti yang dapat membuktikan bahawa tertuduh telah menendang atau menumbuk si mati atau bahawa dia telah menggunakan objek tumpul untuk menyebabkan kecederaan yang menjadi sebab kematian si mati. Penjelasan yang diberikan oleh tertuduh walaupun ringkas, bukan merupakan satu penafian semata-mata. Adalah tidak perlu setiap penjelasan yang panjang atau rumit untuk benar. Lazimnya, kebenaran adalah ringkas dan mudah, tanpa tokok tambah (lihat perenggan 12).

(2) Bagi kesemua keterangan, mahkamah berpuas hati bahawa pihak pendakwaan telah gagal membuktikan kesnya melampaui keraguan munasabah kerana ia bukanlah bagi mahkamah untuk membuat yang inferens yang perlu, di mana, seperti di sini, hal keadaan tidak memperakui inferens yang tidak dapat dielakkan yang akan membuktikan bahawa tertuduh telah menyebabkan kecederaan yang menjadi sebab kematian tertuduh. Penjelasan tertuduh, walaupun ringkas, adalah cukup untuk menimbulkan keraguan yang munasabah ke atas kes pendakwaan (lihat perenggan 12).]

Notes

For cases on s 302 of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1698–1776.

Cases referred to

Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169 ; [1991] 1 CLJ (Rep) 311, SC (refd)

PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457, FC (folld)

Legislation referred to

Criminal Procedure Code ss 180(1), 182A(1), (3)

Penal Code s 302

Iswa bt Tonie (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Peli ak Aron (Peli Aron Advocates) for the accused.

Linton Albert J:

[1] The accused is charged for causing the death of Cindy ak Wat on 6

February 2010 at about 6pm at an unnumbered house at Rumah Berandah, Nanga Benggap, Lubok Antu, Sarawak an offence under s 302 of the Penal Code. The prosecution called 17 witnesses out of which the testimonies of three witnesses related directly to the murder of the deceased by the accused.

[2] Baji @ Lidi ak Jalin ('PW1'), a policeman attached to the Lubok Antu Police Station testified that he was together with the deceased at Lubok Antu Bazaar on 6 February 2010 from 10am in the morning to 2pm drinking alcohol known locally as 'langkau'. They left together in PW1's car at 2pm without incident, the deceased apparently reaching his house safely while PW1 took a rest at the guardhouse at Batang Ai Primary School where the accused was stationed. The accused then went back to his house to eat and came back two hours later and asked PW1 to check the deceased as he had given him one. The accused had told PW1 about what he had done to the deceased in the Iban language and translated into Bahasa Melayu it went like this: 'Cuba melawat kawan kamu. Saya sudah beri dia sekali.' PW1 thought nothing of what the accused had said and went into his car which was parked at the side of the road and slept inside. He woke up later and was told that the deceased had died. He went to the deceased's house and saw the accused crying and he comforted the accused.

[3] Lindawati ak Una ('PW3') was the wife of the deceased and the daughter of the accused as well. On 6 February 2010, PW3 said the deceased came home drunk after drinking and they quarrelled and while they were quarrelling her father came back and tried to end their quarrel. She said that because the accused tried to interfere, the deceased grasped and strangled the accused from behind and seeing what was happening PW3 testified that she quickly took her child outside and when no one came because she had lost her voice, she went into her house. After sometime, when the two did not make any noise and after hearing the sound of her father's motorcycle and suspecting that her father had left, she went back inside the house she had earlier fled from and saw the deceased lying with blood from his forehead. She said she straightaway took the deceased to the clinic in a van. The deceased was given treatment at the clinic and he was still very drunk then. The deceased died shortly after he was brought back to his house. PW3 confirmed that the quarrel between the accused and the deceased took place at the sitting room of the deceased's house. She said that she was in the accused's house and heating the food when the deceased came home because she did not have a kitchen in her own house. PW3 also said that the deceased was habitually drunk and often vomited blood when he was drunk but the deceased was never treated for that. She said the deceased was treated by Steve Ray ak Shak Loi ('PW4') when PW3 took the deceased to the clinic on 6 February 2010.

[4] PW4 said that he was on duty as a medical assistant at the health clinic at

Batang Ai, Lubok Antu on 6 February 2010 and treated the deceased at 7.30pm. PW4 said he conducted a physical examination of the deceased's body and stitched his wound and gave him anti-tetanus injection. PW4 said that the deceased was drunk because of his behavior and the smell of alcohol from him.

[5] Dr Jamil Dolkadir ('PW15') testified that he carried out an autopsy on the deceased on 8 February 2010. According to PW15's autopsy report (P29), he noted the following external injuries:

> The following were the external injuries noted:
>
> (1) small laceration over left eyebrow measuring bout 2cm long which had been stitched.
>
> (2) abrasion at posterior left shoulder and lateral left wrist.
>
> (3) bruises at anterior neck.

[6] The internal autopsy findings stated in P29 were, inter alia, the following:

> INTERNAL AUTOPSY FINDING
>
> … There was massive haemaperitoneum but no haethorax seen …
>
> GASTROINTESTINAL SYSTEM
>
> … The anterior left lobe of the liver was ruptured measuring about 12cm long and 8cm deep causing the massive haemaperitoneum

[7] The cause of death was described as follows:

> CAUSE OF DEATH
>
> Heamoperitoneum due to ruptured liver due to blunt abdominal injuries.

[8] In his testimony, PW15 explained the blunt abdominal injuries could be caused by leg, hand or other blunt objects. The prosecution adduced evidence to the effect that the accused was subsequently arrested and charged for murdering the deceased.

[9] Section 180(1) of the Criminal Procedure Code requires that at the conclusion of the case for the prosecution, the court shall consider whether the prosecution has made out a prima case against the accused. In the light of the evidence that have been set out above measured against the requirements laid down in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457, I was satisfied that the prosecution had established a prima facie case against the accused in that the accused had intentionally inflicted the

injury to the deceased which resulted in the death of the deceased. In *Public Prosecutor v Mohd Radzi bin Abu Bakar*, Gopal Sri Ram JCA (as he then was), delivering the judgment of the Federal Court said at p 399 (MLJ); pp 465–466 (CLJ):

> What is required of a subordinate court and the High Court under the amended sections is to call for the defence when it is satisfied that a prima facie case has been made out at the close of the prosecution case. This requires the court to undertake a maximum evaluation of the prosecution evidence when deciding whether to call on the accused to enter upon his or her defence. It involves an assessment of the credibility of the witnesses called by the prosecution and the drawing of inferences admitted by the prosecution evidence. Thus, if the prosecution evidence admits of two or more inferences, one of which is in the accused's favour, then it is the duty of the court to draw the inference that is favourable to the accused.
>
> … If the court, upon a maximum evaluation of the evidence placed before it at the close of the prosecution case, comes to the conclusion that a prima facie case has not been made out, it should acquit the accused.

[10] In the circumstances, the accused was called upon to enter his defence. The accused elected to give sworn evidence. The accused testified that on 6 February 2010 when he arrived home after work, there was an altercation between the deceased and his wife PW3 and the accused asked PW3 what it was about and she answered 'that drunk fellow' to which the accused responded by telling the deceased to stop drinking. The deceased retorted saying 'one-eyed person' and went from the back to pin the accused down but the accused ran out with his youngest grandchild. The accused did not know what happened to the deceased after that until later when PW3 came to the school where the accused was working to tell the accused what happened to the deceased. In cross-examination, the accused steadfastly denied numerous suggestions put to him. He denied that the deceased strangled him from behind and retaliated by hitting the deceased. He also denied that he used his hands and legs to hit the deceased.

[11] Section 182A(1) of the Criminal Procedure Code states that at the conclusion of the trial, the court shall consider all the evidence before it and shall decide whether the prosecution has proved its case beyond reasonable doubt. The principles to be applied are set out n the case of *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169; [1991] 1 CLJ (Rep) 311 where Mohd Azmi SCJ delivering the judgment of the Supreme Court said at p 171 (MLJ); p 315 (CLJ):

> It is a well established principle of Malaysian criminal law that the general burden of proof lies throughout the trial on the prosecution to prove beyond reasonable doubt the guilt of the accused for the offence with which he is charged. There is no similar burden placed on the accused to prove his innocence.

If defence is called, the duty of the accused is only to cast a reasonable doubt in the prosecution case. He is not required to prove his innocence beyond reasonable doubt.

[12] Apart from the evidence of PW3, there was a paucity of evidence which would establish that the accused had kicked or punched the deceased or that he had used a blunt object to inflict the injury which was the cause of death of the deceased. The explanation given by the accused although brief was not a bare denial. It is not necessary for every explanation to be long or complicated in order to be true. All too often the truth is short and simple, devoid of embellishment. On the totality of evidence before the court, I am satisfied that the prosecution had failed to prove it's case beyond reasonable doubt because it was not for the court to make the necessary inferences, where, as here, the circumstances do not admit of irresistible inferences which would establish that the accused had inflicted the injury which caused the death of the accused. The accused's explanation short as it was, was sufficient to cast a reasonable doubt on the prosecution's case.

[13] Section 182A(3) of the Criminal Procedure Code states that if the prosecution has not proved its case beyond reasonable doubt, the court shall record an order of acquittal. In the circumstances, the accused is acquitted and discharged and accordingly released and set free. All exhibits except documentary shall be kept in police custody until the expiry of the time limited for an appeal. Order accordingly.

Accused discharged and acquitted.

Reported by Ashgar Ali Ali Mohamed